



PLANNING BOARD

Report to Town Meeting

Article 35. Locational Requirements for Non-Conforming Structures in Mixed-Use Centers (Planning Board)

To see if the Town will amend Article 9, Non-Conforming Lots, Uses and Structures, by adding the following new Section 9.3:

~ SEE WARRANT LANGUAGE ~

Recommendation

The Planning Board voted unanimously 9-0 to recommend that Town Meeting adopt Article 35. However, if Article 32 fails, Article 35 should be referred back to the Planning Board.

Background

Article 35 is the third of three articles being proposed to increase the viability of Amherst's mixed-use centers. The others are Articles 31 and 32. Article 35 proposes to add a new Section 9.3 to Article 9, Non-Conforming Lots, Uses and Structures—the Zoning Bylaw chapter that regulates how (and if) lots, uses, and structures that do not conform to Amherst's zoning regulations can be changed. Some of the language in Article 35 has been adapted from earlier proposed form-based design regulations. The purposes of the regulations include "to promote sound design, enhance the creation of pedestrian-friendly streetscapes and spaces, and foster more functional and successful mixed-use properties."

Creation of a Pedestrian-Friendly Streetscape - The language proposed under new Section 9.3 would regulate how non-conforming buildings and structures could change over time. It would require that new additions, expansions, and new separate buildings be located so that they are extended toward the street and into the new front setback 'ranges' proposed under Article 32. This would connect new and existing buildings to the nearby streets, enhance pedestrian access to the building(s) and create the possibility for new pedestrian spaces. Successful mixed-use centers have a strong pedestrian emphasis in terms of their design.

What's Non-Conforming? - Many existing buildings in Amherst's mixed use centers are non-conforming, and they are non-conforming for a variety of different reasons. Some were built long before Amherst adopted zoning and as a result, based on our current regulations for new development, they cover too much of their lot or are too close to property boundaries. Some of these buildings nonetheless reflect the kinds of development that supports and fosters successful mixed-use centers. Many older buildings in the downtown B-G District fall into this category—they are built right up on the street, or close enough to it to help create a pedestrian-friendly streetscape. They have multiple stories and often contain a mix of mutually-supportive uses, including residential uses.

Auto-Oriented Design - Other existing buildings in Amherst's mixed-use centers date from the latter half of the 20th century and represent development guided by zoning that emphasized auto-oriented commercial layout and design. The result in some cases, especially in the COM Districts, is commercial strip development.

Many of these non-conforming buildings were built far back from the nearest streets, with vehicular drives and parking deliberately placed between the street and the buildings for the convenience of customers in cars. Such environments are difficult and unsafe for pedestrian use and prevent the creation of the kinds of streetscapes that make mixed-use centers economically and socially successful. If adopted, Article 32 will cause many of these properties to become non-conforming, where they are not already.

Flexibility – Since all future situations cannot be anticipated, Article 35 provides flexibility for properties where full compliance with Section 9.3 is not feasible or does not make sense in terms of the stated purposes of this section. Under new Section 9.313, applicants can apply to the board considering the permit for their new or expanded use for a Special Permit to waive or modify the requirements. Any such waiver or modification could be granted only “for compelling reasons of safety, aesthetics, sustainable site design, or historic or environmental preservation needs which serve the purposes of this section.”

Public Hearing

The Planning Board held a public hearing on Article 35 on Wednesday, April 17. The Zoning Subcommittee presented a unanimous recommendation in favor of the amendment, saying that it furthered the Board's intent to make Amherst's existing business districts more like village centers. Zoning that anticipates or encourages auto-oriented development does not serve Amherst well. The zoning districts affected by Article 35 occur in or immediately adjacent to existing centers. This change would help encourage a more mixed-use pedestrian environment in accordance with the goals expressed in the Master Plan.

Chair David Webber noted that Article 35 only addressed changes to properties with non-conforming buildings, and did not affect new construction on cleared sites.

Three members of the public were present. Two North Amherst residents expressed concerns about the effect of all of the proposed changes—Articles 31, 32 and 35—on the COM District in that area, stating that they believed the changes to be inappropriate and that the COM District should not be made into a village center. The cumulative effect of the three articles would be to change the COM District into something new and different from what it has been—that needed to be plainly stated and understood by everyone. While it was difficult to express concern about Article 35 by itself, the cumulative impact of all three articles seemed confusing and complex. They combined to change the character and increase the potential intensity of development in the North Amherst COM District, and that was a strong concern on the part of the neighbors.

Members of the Planning Board stated that part of the intent of these articles is to allow all of Amherst’s mixed-use center districts—including the COM Districts—to foster a mix of uses and to develop over time of the characteristics of pedestrian-oriented centers, while retaining existing permitted uses and most existing dimensions. The intent was to make all of Amherst’s mixed use center districts more successful and more reflective of the community’s goals. Additionally, under Article 35, the “steam valve” provided by Section 9.313 would allow variation in how the new requirements were applied to non-conforming properties seeking to expand and change.

After further discussion, the Planning Board voted unanimously 9-0 to recommend that Town Meeting adopt Article 35. However, if Article 32 fails, Article 35 should be referred back to the Planning Board.